

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 226 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

=====

1. Whether Reporters of Local Papers may be allowed
to see the judgements?
YES
2. To be referred to the Reporter or not?
NO

J

3. Whether Their Lordships wish to see the fair copy
of the judgement?
NO
4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
NO
5. Whether it is to be circulated to the Civil Judge?
NO

STATE OF GUJARAT

Versus

CONTINENTAL TEXTILE MILLS,

Appearance:

Mr N.R.Sahani, learned counsel for the workmen

Mr K.S.Nanavati, Sr. Advocate with Mr.K.D.Gandhi, learned
counsel for respondent Mill

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 21/03/97

ORAL JUDGEMENT

1. This suo motu proceedings has arisen by the order of this Court (Coram : K.R.Vyas, J.) dated April 28, 1995 passed in Special Civil Application No.1234/95, which reads as follows :

"Considering the offence for which the accused were charged, the manner in which the case was placed for orders without serving the copy to the complainant, the manner in which the impugned order of conviction and sentence came to be passed imposing a penalty of meagre amount, I exercise suo motu revisional powers to consider the legality and propriety of the impugned order passed by the learned Metropolitan Magistrate, Court No.6, Ahmedabad in Criminal Case No.100/92. Hence, notice is ordered to be issued to the accused calling upon them to show cause as to why the sentence should not be enhanced. Office to issue notice accordingly to be made returnable on 19th June, 1995."

2. The said Special Civil Application has been filed by Devpalsinh Ramsinh Rajput and Vishnubhai Dashrathsinh Goswami, claiming to be the permanent workers of the respondent Continental Textile Mill Ltd. (hereinafter referred to as the "Mill") against the apprehended illegal, unjust and unfair transactions likely to enter between the respondent No.1 and 2 on one hand and the respondent No.5 i.e. Majoor Mahajan Sangh on the other, depriving the 2200 workers of their statutory rights u/s 25(o) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'the Act of 1947'). In para-2.7 of the petition, it is stated that the respondent No.5 Majoor Mahajan Sangh had made a complaint to the Labour Commissioner against the illegal closure of the said Mill which was registered as a Case No.100/92 for the offence u/s 25(r) of the Act of 1947. In the said case, the

respondent Mill admitted the offence of having illegally closed the Mill and as such, they have been fined to Rs.400/- by order dated 15/10/1994.

3. It is said that the respondent Mill was originally known as New Textile Commercial Mill established in the year 1919. It was sold on three times. The last transfer of the ownership and management of the said Undertakings between the Bharat Vijay Mills Ltd and the respondent No. 2 Mr. C.L.Verma, Chairman and Managing Director, Continental Textiles Mills Ltd, took place sometime in the year 1986 and renamed the Mill as the Continental Textiles Mill Ltd. There were about 2200 workmen producing cotton as well as synthetic textiles. The say of the workmen is in all previous transfers, there has been a compliance of section 25-FF of the Act in the sense that all the workmen were given continuity of service without any interruption and their service conditions remained unaltered. However, as the present management of the Mill, contravened section 25(o) of the Industrial Disputes Act which is an offence punishable u/s 25(R) of the Act read with rule-32 of the Rules. A complaint was filed by the Government of Gujarat through Labour Officer and Conciliation Officer under the Act on August 07, 1992 in the Court of the learned Metropolitan Magistrate, Court No.6, at Ahmedabad.

4. Learned counsel for the accused, admitting the guilt, as is evident from the application u/s 253 of the Code of Criminal Procedure, the English translation of which reads as follows :

"In the above matter, the advocate on behalf of the accused, as per the provisions of section 253 of the Criminal Procedure Code, admit the offence. The Mill company of the accused is facing acute financial stringency and the accused are mere employees of the company. In such circumstances, taking lenient view in the interest of justice, we urge to impose minimum penalty."

On the said application, the learned Magistrate took the proceedings below exh.1, the English translation of which reads as under :

"ORDER : Each accused on being held guilty under section 252 of Criminal Procedure Code for offence u/s 25(R) read with section 32 of Industrial Disputes Act, 1947, is ordered penalty

per count Rs. 100/- (Rupees one hundred only) + Rs.100/- + Rs.100/- + Rs.100/- = Rs.400/- (Rupees four hundred only), failing which shall undergo imprisonment for a period of two months for every offence."

5. I have heard Mr.N.R.Sahani, learned counsel appearing for the workmen and Mr.K.S.Nanavati, Senior Advocate for the accused respondents.

6. A reading of section 25(o) clearly shows that, for closure in the procedure prescribed under sub-clause (1) of the said provision is mandatory to be followed by an employer, who intends to close down the Undertaking. A failure to apply or failure to comply with the provisions of the said section, makes an employer liable under sub-clause (1) of section 25(R) for punishment of imprisonment for a term upto six months or with a fine upto Rs.5,000/- or both. The accused respondents have admitted their guilt and therefore, the only question involved in the present suo motu proceedings is as to whether the fine of Rs.100/imposed on each of the accused is sufficient.

7. The apex Court in People's Union for Democratic Rights and others vs. Union of India reported in AIR 1982 SC 1473 has observed that the labour laws are enacted for improving the conditions of the workers and the employers cannot be allowed to buy off immunity against violation of labour laws by paying a paltry fine which they would not mind paying, because by violating the labour laws, they would be making profit which would far exceed the amount of the fine. If violations of labour laws are going to be punished only by meagre fines, it would be impossible to ensure observance of the labour laws and the labour laws would be reduced to nullity. The Court impressed upon the Magistrates and Judges in the country that violations of labour laws must be viewed with strictness and wherever any violations of labour laws are established before them, they should punish the errant employers by imposing adequate punishment.

8. The only say of the accused persons in this case is that there are financial constrained and in view of this, it was not possible to make the payments to the workmen. Mr. Nanavati, learned Advocate also submitted that if some more time is given, possibly the matter may be settled. On the other hand, Mr. Sahani, learned counsel submits that the accused persons are not at all

serious in the matter. Inspite of the fact that suo motu notice was issued, as back as in April 1995, nothing has been done. He further submits that, with great difficulty, they could even procure the presence of the accused persons. The Court had to issueailable warrants against the respondents. He also submits that the liability on the respondents Mill was more than 7 to 8 crores of rupees in the year 1992 itself. He further submits that the financial stringency has nothing to do with the compliance of the provisions of section 25(o) of the Act.

9. Considering the submissions of the parties, in my view, the imposition of fine of Rs.100/- on each accused persons is nothing but making a mockery of the provisions of the Industrial Disputes Act, 1947, which are essentially for the welfare and protection of the rights of the labours. Thus, it is a fit case in which the sentence awarded should be enhanced.

10. Considering the facts of the case, ends of justice would meet if the accused respondents No.2 to 4 are sentenced to three months imprisonment and fined to Rs.5,000/- each.

11. In view of this, I modify the impugned order of the learned Metropolitan Magistrate, Court No.6, Ahmedabad dated 15/10/1994 passed in Criminal Case No.100/92 and substitute the sentence "instead of Rs.100/-, sentence to each of the accused persons to suffer three months simple imprisonment and to pay a fine of Rs.5,000/- each and in default of payment, to further undergo one months simple imprisonment. Rule made absolute to the aforesaid extent.

parmar*